

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

IN THE MATTER OF:)	
)	Proceeding under Sections
)	104,122(2) and 122(d)(3)
Stauffer Chemical)	of the Comprehensive
Superfund Site)	Environmental Response,
)	Compensation and Liability
Tarpon Springs, Florida)	Act of 1980, as amended
)	42 U.S.C. §§ 9604 and 9622.
Atkemix Thirty-Seven, Inc.,)	
Aventis CropScience USA Inc.,)	EPA Docket NO.:00-43-C
Aventis CropScience USA LP)	
Respondents)	
)	

AGREEMENT TO CONDUCT STUDIES
TO INCLUDE: GEOPHYSICAL STUDIES, TREATABILITY STUDIES, AND
GROUNDWATER CHARACTERIZATION STUDIES

I. JURISDICTION

This Agreement is entered into by the United States Environmental Protection Agency (EPA) with Atkemix Thirty-Seven, Inc., Aventis CropScience USA Inc. and Aventis CropScience USA LP (Respondents), pursuant to the authority vested in the President of the United States by Sections 104, 122(a) and 122(d)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. §§ 9604, 9622(a) and 9622(d)(3). This authority was delegated by the President to the Administrator of the EPA by Exec. Order No. 12580, dated January 23, 1987, 52 Fed. Reg. 2923 (Jan. 29, 1987), and was further delegated to the Regional Administrator of Region IV EPA and redelegated to the Director, Waste Management Division.

Respondents agree to undertake all actions required by the terms and conditions of this Agreement and attached Scope of Work (SOW) to conduct certain studies to specifically include: Geophysical Studies, Treatability Studies, and Groundwater Characterization Studies. The Respondents consent to and will not contest EPA jurisdiction regarding this Agreement.

II. PARTIES BOUND

This Agreement shall apply to and be binding upon EPA and the Respondents, their agents, successors, assigns, officers, directors, and principals. Respondents are jointly and severally responsible for carrying out all actions required of them by this Agreement. The signatories to this Agreement certify that they are authorized to execute and legally bind the parties they represent to this Agreement. No change in the ownership or corporate status of the Respondents shall alter their responsibilities under this Agreement.

The Respondents shall provide a copy of this Agreement to any subsequent owners or successors before ownership rights are transferred. The Respondents shall provide a copy of this Agreement to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any work performed under this Agreement, within fourteen (14) days after the effective date of this Agreement or the date of retaining their services, whichever is later. Respondents shall condition any such contracts upon satisfactory compliance with this Agreement. Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Agreement and for ensuring that their subsidiaries, employees, contractors, consultants, subcontractors and agents comply with this Agreement.

III. STATEMENT OF PURPOSE

In entering into this Agreement, the mutual objectives of EPA and the Respondents are: (A) completion of certain studies to further ensure that the selected remedy for Operable Unit 1 will provide long-term protectiveness of human health and the environment over the life of the remedy as required under 40 CFR Part 192; and (B) to recover response and oversight costs not inconsistent with the National Contingency Plan (NCP) incurred by EPA with respect to this Agreement.

The studies to be conducted pursuant to this Agreement, shall consist of: 1) a geophysical study to characterize the geology underlying the Site and its ability to support the selected remedy for Operable Unit 1 and to remain protective of human health and the environment over the life of the remedy as required under 40 CFR Part 192; 2) a treatability study for the selected in-situ solidification/stabilization remedy to determine its ability to remain protective of human health and the environment over the life of the remedy as required under 40 CFR Part 192; 3) studies of the surficial and Floridan aquifers beneath the Site to determine the potential impacts that the aquifers flow characteristics and contaminant levels may have on the effectiveness of the selected remedy; and 4) all necessary site preparation activities, as necessary to prepare for the required (geophysical, treatability, surficial/Floridan aquifers) testing.

The activities conducted pursuant to this Agreement will be consistent with the National Contingency Plan (NCP), 40 C.F.R. Part 300, et seq., and will be subject to the express EPA approvals as set forth below.

In entering into this Agreement, Respondents do not admit to any liability to EPA or any other party, and Respondents expressly reserve all of their rights except as specifically set forth in this Agreement.

IV. EPA'S FINDINGS OF FACTS

The following constitutes an outline of the facts asserted by EPA upon which this Agreement is based:

A. The Stauffer Chemical Company Tarpon Springs Superfund Site (Site) is located at 877 Anclote Road, Pinellas County, Tarpon Springs, Florida, 34689. The Site is 160 acres (130 acres dry, 30 acres extending into the Anclote River and Meyers Cove). The Site lies along the Anclote River approximately one mile upstream of the Gulf of Mexico and approximately two miles north of the City of Tarpon Springs. The surrounding land use is residential and light industrial. The Stauffer Chemical Company and its predecessor manufactured elemental phosphorous on the Site from 1947 until the early 1980's. The plant was dismantled in the early 1990's; only a few structures remain on the Site.

B. The respondents are: Atkemix Thirty-Seven, Inc.; Aventis CropScience USA Inc.; Aventis CropScience USA LP.

C. The current owner of the property is Atkemix Thirty-Seven, Inc. Aventis CropScience USA Inc. is the corporate successor to Stauffer Chemical Company, a former owner/operator of the Site. Aventis CropScience USA LP is an affiliate of Aventis CropScience USA Inc.

D. The Site was listed on the National Priority List, as defined in Section 105 of CERCLA, as amended, 42 U.S.C. § 9605, in May 1994.

E. Hazardous substances present on the Site include: arsenic, antimony, beryllium, thallium, elemental phosphorous, radium-226 and carcinogenic polycyclic aromatic hydrocarbons (CPAHs), and Radon. Phosphate slag is present at the Site. In accordance with 40 CFR 264(b)(7)(ii)(E), phosphate slag is a solid waste but not a hazardous waste.

F. The contaminants were detected during a series of sampling events including a 1989 Final Expanded Site Inspection, a 1991 Interim Final Listing Site Inspection, a 1990 Radiological Studies, 1989 and 1990 sampling programs, a 1991 sediment sampling program, and a 1993 remedial investigation.

G. The hazardous properties associated with the Site include reactivity and toxicity. A number of listed wastes under the Resource Conservation and Recovery Act have been detected above background levels at the Site, but only benzo(a)pyrene - U022 and dibenzo(a,h)anthracene - U063 are listed as contaminants of potential concern in the Record of Decision under Operable Unit 1. In addition, Trichloroethylene (TCE) (U-228) was detected in one shallow monitoring well (MW 1-s).

H. The Site consists of sandy/clay soils underlain by a potentially karst Tampa limestone formation. There are two aquifers beneath the Site. A thin surficial aquifer exists at a depth of approximately 10 feet below ground surface extending down to the Tampa limestone formation (depth ranges from 17-37 feet). The surficial aquifer is underlain by the Floridan aquifer, which is in the Tampa limestone formation. The aquifers are separated by an intermittent clay layer that impedes in some locations but does not totally prevent communication between the two aquifers. The western boundary of the Site is the Anclote River.

I. The source of the alleged release included unlined ponds and the transport and processing of materials on the Site. The result of the alleged release includes contaminated soils, contaminated ponds, contaminated ground water, and a slag processing area. Potential migration pathways and routes of exposure to future on-site residents include ingestion of ground water, ingestion and dermal exposure to surface soils and surface waters, and irradiation by radionuclides present in slag and soils.

J. Atkemix Thirty-Seven, Inc., completed a Remedial Investigation (RI) in December 1993 and completed a Feasibility Study (FS) Report in March 1996. The decision by EPA on the remedial action to be implemented for Operable Unit 1 at the Site is embodied in a Record on Decision (ROD), executed on July 2, 1998. This is the first of two operable units planned for the Site. Operable Unit 1 addresses the source of any soil and groundwater contamination by treating and containing the source material. The second operable unit will address any contaminated groundwater in the surficial aquifer.

K. The United States Department of Justice, on behalf of EPA, lodged a proposed consent decree and scope of work whereby Atkemix Thirty-Seven, Inc. and Aventis CropScience USA, Inc. agreed to perform the remedy set forth in the ROD and perform the studies set forth in this Agreement. To address concerns expressed by the public and the Florida Department of Environmental Protection, Respondents, without concurring that completion of the studies is required for entry of the proposed consent decree, agreed to withdraw the proposed consent decree, without prejudice, and instead agreed to enter into this Agreement for the performance of the studies.

V. EPA'S CONCLUSIONS OF LAW

EPA asserts that:

A. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

B. The Respondents are persons as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

C. The Respondents are responsible parties under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

D. Contaminants found at the Site as described in Section IV above are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), or constitute a pollutant or contaminant that may present an imminent and substantial danger to the public health or welfare under Section 104(a)(1) of CERCLA, 42 U.S.C. 9604(a)(1).

E. The hazardous substances described have been released into the environment and its potential migration pathways constitute both an actual release and threatened release within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

VI. EPA'S DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set out above, EPA has determined that:

A. The actions required by this Agreement are necessary to protect the public health and/or welfare and/or the environment.

B. In accordance with Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1), EPA has determined that the work to be performed pursuant to this Agreement, if performed according to the terms of this Agreement, will be done properly and promptly by the Respondents. EPA has also determined that the Respondents are qualified to conduct such work.

VII. WORK TO BE PERFORMED

All aspects of the work to be performed by Respondents pursuant to this Agreement shall be under the direction and supervision of a qualified contractor who shall be a qualified professional engineer or geologist with expertise in hazardous site cleanup. O'Brien & Gere Engineers, Inc., has been selected by the Respondents and approved by the EPA as the Supervising Contractor.

Within thirty (30) days after the effective date of this Agreement, Respondents shall submit to EPA in writing the

name, title, and qualifications of subcontractors proposed to be used in carrying out the geophysical studies portion of this Agreement to be performed pursuant to this Agreement. EPA shall notify the Respondents of its approval or disapproval of any subcontractor in writing, within twenty (20) calendar days of its receipt of this submission by the Respondents. The Respondents may then select any remaining subcontractor.

If, at any time thereafter, Respondents propose to change any contractor, Respondents shall give written notice to EPA and shall obtain approval from EPA before the new contractor performs any work under this Agreement.

Based on the foregoing, it is hereby AGREED TO AND ORDERED that the following work will be performed:

A. Within forty-five (45) calendar days of the effective date of this Agreement, Respondents shall submit to EPA a Master Studies Work Plan. The purpose of the Master Studies Work Plan is to provide: the Site background; a statement of the objectives of this Agreement; and provide an overview of the Sampling and Analysis Plan, Geophysical Studies Plan, Ground Water Studies Plan, Health and Safety Plan, and Treatability Study Work Plan. All work plans to be completed under this Agreement shall be developed in accordance with the National Contingency Plan and the attached SOW. Each work plan required under this Agreement shall include a comprehensive description of the work to be performed, the media(s) to be evaluated under the work plan, the methodologies to be used and the rationale for the selection of each methodology. The Master Studies Work Plan shall synopsise the descriptions to be provided for each work plan. A comprehensive schedule for completion of each major activity by this Agreement and including of the deliverables listed in this Agreement shall also be included.

The Sampling and Analysis Plan (SAP) shall include procedures to ensure that sample collection and analytical activities are conducted in accordance with technically acceptable protocols and that the data generated will meet the Data Quality Objectives (DQOs) established. The SAP provides a mechanism for planning field activities and consists of a Field Sampling and Analysis Plan (FSAP) and a Quality Assurance Project Plan (QAPP).

The FSAP shall define in detail the sampling and data-gathering methods that shall be used on the project. It shall include sample objectives, sample location (horizontal and vertical) and frequency, sampling equipment and procedures, and sample handling and analysis. The QAPP shall describe the project objectives and organization, functional activities, and quality assurance and quality control (QA/QC) protocols that shall be used to achieve the desired DQOs.

A Health and Safety Plan shall be prepared in conformance

with the Respondents' health and safety program and OSHA regulations and protocols.

B. Respondents will implement the Master Studies Work Plan and all other required work plans as approved by EPA. The Master Studies Work Plan and any EPA approved amendments thereto will be attached to and incorporated in this Agreement as Attachment 2. All studies shall be conducted in accordance with the schedule contained in the Master Studies Work Plan as approved by EPA.

C. The Respondents shall commence with the work plans and other tasks addressed in the Master Studies Work Plan in accordance with the schedule provided in Attachment C of the attached SOW.

D. Respondents shall submit to EPA written monthly progress reports which: (1) describe the actions which have been taken toward achieving compliance with this Agreement during the previous month; (2) include all results of sampling and tests and all other data received by Respondents during the course of the work; (3) include all plans and procedures completed under a work plan during the previous month; (4) describe all actions, data, and plans which are scheduled for the next month, and provide other information relating to the progress of the work as deemed necessary by EPA; and (5) include information regarding percentage of completion, unresolved delays, encountered or anticipated, that may affect the future schedule for implementation of the SOW and/or the work plans pursuant to the SOW, and a description of efforts made to mitigate those delays or anticipated delays. These progress reports are to be submitted to EPA by the fifth day of every month following the effective date of this Agreement.

E. Deliverables, including reports, plans or other correspondence to be submitted pursuant to this Agreement, shall be sent by regular certified mail, express mail or overnight delivery to the following addresses or to such other addresses as the EPA hereafter may designate in writing.

John Blanchard, P.E., R.E.M.
Remedial Project Manager
EPA - Region IV
Waste Management Division
61 Forsyth Street, SW
Atlanta, Georgia 30303

The number of copies to be submitted to EPA for each deliverable is identified in the studies Scope of Work.

For informational purposes all deliverables (two copies) shall be sent to:

Don Harris
Florida Department of Environmental Protection
Bureau of Waste Cleanup

Twin Towers Building
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Documents to be submitted to the Respondents' Project Coordinator should be sent to:

Mr. Frank McNeice
c/o Stauffer Management Company
P.O. Box 1207
Tarpon Springs, FL 34688-1207

VIII. SUBMISSIONS REQUIRING AGENCY APPROVAL

A. EPA reserves the right to comment on, modify and direct changes for all deliverables. Upon receipt of any plan, report or other item which is required to be submitted for approval pursuant to this Agreement, EPA shall either: (1) approve the submission; or (2) disapprove the submission, notifying Respondents of deficiencies. If such submission is disapproved, EPA shall either: (1) notify the Respondents that EPA will modify the submission to cure the deficiencies; or (2) direct the Respondents to modify the submission to cure the deficiencies.

B. Upon receipt of a notice of disapproval and notification directing modification of the submission, Respondents shall, within thirty (30) days, cure the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval, Respondents shall proceed to take any action required by any nondeficient portion of the submission.

C. In the event of approval or modification of the submittal by EPA, Respondents shall proceed to take any action required by the plan, report, or other item, as approved or modified.

D. If, upon resubmission, the plan, report, or item is not approved, Respondents shall be deemed to be in violation of this Agreement and stipulated penalties shall begin to accrue pursuant to Section XVI of this Agreement. EPA retains the right to seek stipulated or statutory penalties, to require the amendment of the document, to perform further studies, to conduct a complete studies report pursuant to its authority under CERCLA, and to take any other action, including, but not limited to, enforcement action to recover its costs pursuant to its authority under CERCLA.

E. Neither failure of EPA to expressly approve or disapprove of Respondents' deliverables within a specified time period, nor the absence of comments, shall be construed as approval by EPA. Respondents are responsible for preparing and submitting deliverables acceptable to EPA.

F. Respondents shall make presentations at, and

participate in, meetings at the request of EPA during the initiation, conduct and completion of the studies. In addition to the discussion of the technical aspects of the studies, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

G. The provisions of this Agreement shall govern all proceedings regarding the studies conducted pursuant to this Agreement. In the event of any inconsistency between this Agreement and any required deliverable submitted by Respondent, the inconsistency will be resolved in favor of this Agreement.

IX. DESIGNATED PROJECT COORDINATORS

A. On or before the effective date of this Agreement, EPA and Respondents will each designate a Project Coordinator and an Alternate Project Coordinator. The "Project Coordinator" for EPA will be the Remedial Project Manager (RPM) or the On-Scene Coordinator (OSC) responsible for this Site. Each Project Coordinator will be responsible for overseeing the implementation of this Agreement. The EPA Project Coordinator will be EPA's designated representative at the Site. To the maximum extent possible, communications between Respondents and EPA, including all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Agreement, will be directed through the Project Coordinators.

B. EPA and Respondents each have the right to change their respective Project Coordinator. Such a change will be accomplished by notifying the other party in writing at least five (5) calendar days prior to the change.

C. The EPA designated Project Coordinator will have the authority vested in a RPM or OSC by the National Contingency Plan, 40 C.F.R. Part 300, as amended. This includes the authority to halt, conduct, or direct any work required by this Agreement, or any response actions or portions thereof when he or she determines that conditions may present an immediate risk to public health or welfare or the environment.

D. The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage or delay of work.

E. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the studies, as required by Section 104(a) of CERCLA, 42 U.S.C. 9604(a). The oversight assistant may observe work and make inquiries in the absence of EPA, but is not authorized to modify the work plans pursuant to this Agreement and SOW.

X. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

A. Respondents shall use quality assurance, quality

control, and chain of custody procedures in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans" (QAMS-005/80) and the "EPA Region IV Environmental Investigations Standard Operating Procedures and Quality Assurance Manual (U.S. EPA Region IV, Environmental Services Division, May, 1996), and subsequent amendments to such guidelines. Prior to the commencement of any monitoring project under this Agreement, Respondents shall submit for review, modification and/or approval by EPA, a Quality Assurance Project Plan ("QAPP") that is consistent with applicable guidelines. Sampling data generated consistent with the QAPP(s) shall be admissible as evidence, without objection, in any proceeding under Section XIV this Agreement. Respondents shall assure that EPA personnel or authorized representatives are allowed access to any laboratory utilized by Respondents in implementing this Agreement.

B. Respondents shall make available to EPA the results of all sampling and/or tests or other data generated by Respondents with respect to the implementation of this Agreement and shall submit these results in monthly progress reports as described in Section VII.D. of this Agreement.

C. At the request of EPA, Respondents shall allow split or duplicate samples to be taken by EPA, and/or their authorized representative, of any samples collected by Respondents pursuant to the implementation of this Agreement. Respondents shall notify EPA not less than fourteen (14) days in advance of any sample collection activity. In addition, EPA shall have the right to collect any additional samples that EPA deems necessary. EPA may also, in lieu of split sampling, conduct oversight of the Respondents' sampling activities and request the CLP data packages for independent QA/QC.

D. Respondents shall ensure that the laboratory utilized by Respondents for analyses participates in a EPA quality assurance/quality control program equivalent to that which is followed by EPA and which is consistent with EPA document QAMS-005/80. In addition, EPA may require submittal of data packages equivalent to those generated in the EPA Contract Laboratory Program (CLP) and may require laboratory analysis of performance samples (blank and/or spike samples) in sufficient number to determine the capabilities of the laboratory.

E. Notwithstanding any provision of this Agreement, the EPA hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA, and any other applicable statute or regulation.

XI. ACCESS

A. From the date of execution of this Agreement until

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EPA provides written notice of satisfaction of the terms of the Agreement, the EPA and its authorized representatives and agents shall have access at all reasonable times and upon reasonable notice to the Site and any property to which access is required for the implementation of this Agreement, to the extent access to the property is controlled by or available to Respondents, for the purposes of conducting any activity authorized by or related to this Agreement, including, but not limited to:

1. Monitoring the studies or any other activities taking place on the property;
2. Verifying any data or information submitted to the United States;
3. Conducting investigations relating to contamination at or near the Site;
4. Obtaining samples;
5. Evaluating the need for or planning and implementing additional remedial or response actions at or near the Site; and
6. Inspecting and copying records, operating logs, contracts, or other documents required to assess Respondents' compliance with this Agreement.

B. To the extent that the Site or any other area where work is to be performed under this Agreement is owned or controlled by persons other than Respondents, Respondents shall use its best efforts to secure from such persons access for Respondents, as well as for EPA and authorized representatives or agents of EPA, as necessary to effectuate this Agreement. Copies of such access agreements will be provided to EPA prior to Respondents' initiation of field activities. For purposes of this paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access and access agreements. If access is not obtained within thirty (30) days of the approval date of the Master Studies Work Plan, Respondents shall promptly notify the EPA. The United States may thereafter assist Respondents in obtaining access. Respondents shall, in accordance with Section XVII herein, reimburse the United States for all costs incurred by it in obtaining access, including but not limited to, attorneys' fees and the amount of just compensation and costs incurred by the United States in obtaining access.

C. Notwithstanding any provision of this Agreement, the EPA retains all of its access authorities and rights under CERCLA, RCRA and any other applicable statute or regulations.

XII. CONFIDENTIALITY OF SUBMISSIONS

A. Respondents may assert a confidentiality claim, if appropriate, covering part or all of the information requested by this Agreement pursuant to 40 C.F.R. § 2.203(b). Such an assertion will be adequately substantiated when the assertion is made. Analytical data will not be claimed as confidential by Respondents. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to Respondents.

B. Respondents waive any objection to the admissibility into evidence by EPA (without waiving any objection as to weight) of the results of any analyses of sampling conducted by or for them at the Site or of other data gathered pursuant to this Agreement that has been verified by the quality assurance/quality control procedures established pursuant to Section X.

XIII. RECORD PRESERVATION

EPA and Respondents agree that each will preserve, during the pendency of this Agreement and for a minimum of six (6) years after its termination, all records and documents in their possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys which relate in any way to the Site, despite any document retention policy to the contrary. After this six year period, Respondents will notify EPA within ninety (90) calendar days prior to the destruction of any such documents. Upon request by EPA, Respondents will make available to EPA such records or copies of any such records. Additionally, if EPA requests that documents be preserved for a longer period of time, Respondents will comply with that request.

XIV. DISPUTE RESOLUTION

Any disputes arising under this Agreement shall be resolved as follows: If the Respondents object to any EPA notice of disapproval or decision made pursuant to this Agreement, the Respondents shall notify EPA's Project Coordinator in writing of their objections within 14 calendar days after receipt of the decision. Respondents' written objections shall define the dispute, state the basis of Respondents' objections, and be sent certified mail, return receipt requested. EPA and the Respondents then have an additional fourteen (14) calendar days to reach agreement. If agreement cannot be reached within fourteen (14) calendar day period, the EPA Waste Management Division Director shall provide a written statement of the decision and the reasons supporting that decision to Respondents. The Division Director's determination is EPA's final decision. If Respondents do not agree to perform or do not actually perform the task in dispute as determined by

EPA's Division Director, EPA reserves the right to conduct the work itself, to seek reimbursement from the Respondents, and/or to seek other appropriate relief. If Respondents do not agree to perform or do not actually perform the task in dispute as determined by EPA's Division Director, Respondents reserve their rights to defend themselves from any enforcement action in a court of competent jurisdiction.

Respondents are not relieved of their obligations to perform and conduct any work required by this Agreement while a matter is pending in dispute resolution.

XV. FORCE MAJEURE

A. "Force Majeure" is defined for the purposes of the Agreement as an event arising from causes entirely beyond the control of Respondents and of any entity controlled by Respondents including their contractors and subcontractors, which could not have been overcome by due diligence which delays or prevents the performance of any obligation under this Agreement. Examples of events which may constitute force majeure events include extraordinary weather events, natural disasters, and national emergencies. Examples of events that are not force majeure events include, but are not limited to, normal inclement weather, increased costs or expenses of the Work to be performed under this Agreement, the financial difficulty of Respondents to perform such tasks, the failure of one or more of Respondents to satisfy their obligation under this Agreement, acts or omissions not otherwise force majeure attributable to Respondents' contractors or representatives, and the failure of Respondents or Respondents' contractors or representatives to make complete and timely application for any required approval or permit.

B. When circumstances occur which may delay or prevent the completion of any phase of a work plan or access to the Site or to any property on which part of a work plan is to be performed, whether or not caused by a force majeure event, Respondents shall notify the EPA Project Coordinator orally of the circumstances within forty-eight (48) hours of when Respondents first knew or should have known that the event might cause delay. If the EPA Project Coordinator is unavailable, Respondents shall notify the designated alternate or the Director of the Waste Management Division, EPA Region IV. Within seven (7) calendar days after Respondents first became aware of such circumstances, Respondents shall supply to EPA in writing: (1) the reasons for the delay; (2) the anticipated duration of the delay; (3) all actions taken or to be taken to prevent or minimize the delay; (4) a schedule for implementation of any measures to be taken to mitigate the effect of the delay; and (5) a statement as to whether, in the opinion of the Respondents, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Respondents shall exercise best efforts to avoid or minimize any delay and any effects of a delay. Failure to

comply with the above requirements shall preclude Respondents from asserting any claim of force majeure.

C. If EPA agrees that a delay is or was caused by a force majeure event, the time for performance of the obligations under this Agreement that are directly affected by the force majeure event shall be extended by agreement of the parties, pursuant to Section XXII, for a period of time not to exceed the actual duration of the delay caused by the force majeure event. An extension of the time for performance of the obligation directly affected by the force majeure event shall not necessarily justify an extension of time for performance of any subsequent obligation.

D. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, or does not agree with Respondents on the length of the extension, the issue shall be subject to the dispute resolution procedures set forth in Section XIV of the Agreement. In any such proceedings, to qualify for a force majeure defense, Respondents shall have the burden of proof that the delay or anticipated delay was or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of paragraph B of this Section. Should Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of the Agreement.

XVI. STIPULATED PENALTIES

Unless excused under the provisions of Sections XIV or XV, the Respondents shall pay into the Hazardous Substance Superfund administered by EPA, the sums set forth below as stipulated penalties.

Stipulated penalties shall accrue as follows:

A. For each day during which Respondents fail to perform, in accordance with the schedules contained in this Agreement and in the various plans and reports required under this Agreement incorporated by reference herein, any of the following activities:

1. for failure to timely submit a work plan and draft studies report as required under this Agreement;

2. for failure to timely submit any modifications requested by EPA or its representatives to the Master Studies Work Plan, Sampling and Analysis Plan and draft studies report as required under this Agreement; and

3. for failure to timely submit payment of oversight costs as provided in Section XVII.

Respondents shall be liable to EPA for stipulated penalties in the following amounts:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 14th day	\$500
15th through 44th day	\$1,200
45th day and beyond	\$3,000

B. If Respondents fail to submit a monthly progress report by its due date, Respondents shall be liable to EPA for stipulated penalties in the amount of \$250 per violation for each day during which Respondents fail to submit and, if necessary, modify monthly reports.

C. Respondents shall be liable to EPA for stipulated penalties in the amount of \$500 per violation for each day during which Respondents fail to comply with all other requirements of this Agreement including, but not limited to, any implementation schedule, payment requirement, notification requirement or completion deadline.

All stipulated penalties begin to accrue on the day the violation occurs or on the day following Respondents' failure to comply with any schedule or deadline or the terms, conditions, or requirements contained in this Agreement and/or Work Plan. Stipulated penalties shall continue to accrue until

Respondents' violation ends or until Respondents comply with the particular schedule or deadline.

Payment of stipulated penalties shall be due and owing within fifteen (15) days from the receipt of a written notice from EPA notifying Respondents that penalties have been assessed. Interest shall accrue on any unpaid amounts, beginning at the end of the fifteen day period, at the rate established by the Department of Treasury under 31 U.S.C. § 3717. Respondents shall pay a handling charge of one percent to be assessed at the end of each 31 day period, and a six percent per annum penalty charge, to be assessed if the penalty is not paid in full within 90 days after it is due. The check and transmitted letter shall identify the name of the Site, the Site identification number and the title of this Agreement. A copy of the transmittal letter should be sent simultaneously to the EPA Project Coordinator.

Payment shall be made to:

U. S. Environmental Protection Agency
Region IV

Superfund Accounting
P. O. Box 100142
Atlanta, Georgia 30384
ATTENTION: (Collection Officer for Superfund)

Respondents may dispute EPA's right to any penalty or to the stated amount of any penalties by invoking the Dispute Resolution procedures under Section XIV of this Agreement. Penalties shall accrue but need not be paid during the dispute resolution period. If Respondents do not prevail upon completion of the dispute resolution procedures, all penalties shall be due to EPA within 30 days of resolution of the dispute. If Respondents prevail upon completion of the dispute resolution procedures, no penalties shall be paid.

In the event that EPA provides for corrections to be reflected in the next deliverable and does not require resubmission of that deliverable, stipulated penalties for that interim deliverable shall cease to accrue on the date of such decision by EPA.

Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

The stipulated penalties set forth in this Section do not preclude EPA from electing to pursue any other remedies or sanctions which may be available to EPA by reason of the Respondents' failure to comply with any of the requirements of this Agreement. Such remedies and sanctions may include a suit for statutory penalties up to the amount authorized by law, a federally-funded response action, and a suit for reimbursement of costs incurred by the United States.

XVII. REIMBURSEMENT OF OVERSIGHT AND RESPONSE COSTS

In accordance with Section 104(a)(1) of CERCLA, as amended, 42 U.S.C. § 9604(a)(1), Respondents agree to reimburse the Hazardous Substance Superfund for all response and oversight costs incurred by EPA or its authorized representatives in oversight of Respondents' performance of work under this Agreement not inconsistent with the NCP.

At the end of each fiscal year, EPA will submit to Respondents an accounting of all response and oversight costs incurred by the U.S. Government with respect to this Agreement. Oversight costs shall include all direct and indirect costs of EPA's oversight arrangement for the studies required hereunder, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, compliance monitoring, including the collection and analysis of split samples, inspection of studies activities, Site visits, interpretation of Agreement provisions, discussions regarding disputes that may arise as a result of this Agreement, review and approval or disapproval of reports, the

costs of redoing any of Respondents' tasks, and any assessed interest.

EPA's Agency Financial Management System summary data (SCORES Reports), shall serve as the basis for payment demands.

Failure to submit an accounting in one fiscal year does not prevent EPA from submitting an accounting for that year in a subsequent fiscal year. Respondents shall, within thirty (30) calendar days of receipt of each accounting, remit a certified or cashiers check for the amount of those costs made payable to the Hazardous Substance Superfund. Interest shall begin to accrue on the unpaid balance from that date. Checks should specifically reference the identity of the Site and should be sent to:

U. S. Environmental Protection Agency
Region IV
Superfund Accounting
P. O. Box 100142
Atlanta, Georgia 30384
ATTENTION: Collection Officer for Superfund

A copy of the transmittal letter should be sent simultaneously to the EPA Project Coordinator.

Respondents agree to limit any disputes concerning costs to accounting errors and the inclusion of costs outside the scope of this Agreement. Respondents shall identify any contested costs and the basis of its objection. All undisputed costs shall be remitted by Respondents in accordance with the schedule set out above. Disputed costs shall be paid by Respondents into an escrow account while the dispute is pending. Respondents bear the burden of establishing an EPA accounting error and the inclusion of costs outside the scope of this Agreement.

EPA reserves the right to bring an action against the Respondents pursuant to Section 107 of CERCLA to enforce the response and oversight cost reimbursement requirements of this Agreement and to collect stipulated penalties assessed pursuant to section XVI of this Agreement.

XVIII. RESERVATION OF RIGHTS

Notwithstanding compliance with the terms of this Agreement, the Respondents are not released from liability, if any, for any actions beyond the terms of this Agreement taken by EPA regarding this Site. EPA reserves the right to take any enforcement action pursuant to CERCLA or any other available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages for any violation of law or this Agreement.

Except as otherwise provided herein, EPA and Respondents expressly reserve all rights and defenses that they may have,

including rights and defenses they may have with respect to other parties and insurers and further including EPA's right both to disapprove of work performed by Respondents and to require that Respondents perform tasks in addition to those detailed in the Master Studies Work Plan, as provided in this Agreement. In the event that Respondents decline to perform any additional or modified tasks, EPA reserves its rights under CERCLA to undertake any such additional work. In addition, EPA reserves the right to undertake removal actions and/or remedial actions at any time. In either event, EPA reserves the right to seek reimbursement from Respondents thereafter for such costs which are incurred by the United States and Respondents reserve all rights to contest or defend against such claims or actions.

Following satisfaction of the requirements of this Agreement, Respondents shall have resolved its liability to EPA for the performance of the studies that is the subject of this Agreement. The Respondents are not released from liability, if any, for any actions taken beyond the terms of this Agreement regarding removals, other operable units, remedial design/remedial action (RD/RA), or activities arising pursuant to Section 121(c) of CERCLA.

XIX. OTHER CLAIMS

Nothing in this Agreement constitutes a release from any claim, cause of action or demand in law or equity against any person, insurer, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

EPA reserves the right to bring an action against the Respondents pursuant to Section 107 of CERCLA for recovery of all response and oversight costs incurred by the United States related to this Agreement and not reimbursed by Respondents, as well as any other past and future costs incurred by the United States in connection with response activities conducted pursuant to CERCLA at this Site.

This Agreement does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

In entering into this Agreement, Respondents waive any right to seek reimbursement under Section 106(b)(2) of CERCLA, 42 U.S.C. § 9606(b)(2), for any past costs associated with this Site, or any costs incurred in complying with this Agreement.

Respondents shall bear their own costs and attorney fees.

XX. FINANCIAL ASSURANCE, INSURANCE, INDEMNIFICATION

Respondents shall establish and maintain a financial instrument (e.g., a letter of credit) or trust account or other financial mechanism acceptable to EPA, funded sufficiently to perform the work and any other obligations required under this Agreement, including a margin for cost overruns. Within 15 days after the effective date of this Agreement, Respondents shall fund the financial instrument or trust account sufficiently to perform the work required under this Agreement projected for the period beginning with the effective date of the Agreement through December 31, 2001. Beginning January 1, 2001, and on or before the 15th calendar day of each calendar year quarter thereafter, Respondents shall fund the financial instrument or trust account sufficiently to perform the work and other activities required under this Agreement projected for the succeeding calendar year quarter.

If at any time the net worth of the financial instrument or trust account is insufficient to perform the work and other obligations under the Agreement for the upcoming quarter, Respondents shall provide written notice to EPA within 7 days after the net worth of the financial instrument or trust account becomes insufficient. The written notice shall describe why the financial instrument or trust account is funded insufficiently and explain what actions have been or will be taken to fund the financial instrument or trust account adequately.

Prior to commencement of any work under this Agreement, Respondents shall secure, and shall maintain in force for the duration of this Agreement, and for two years after the completion of all activities required by this Agreement, Comprehensive General Liability ("CGL") and automobile insurance, with limits of \$2 million, combined single limit, naming as insured the United States. The CGL insurance shall include Contractual Liability Insurance in the amount of \$2 per occurrence, and Umbrella Liability Insurance in the amount of \$2 million per occurrence.

Respondents shall also secure, and maintain in force for the duration of this Agreement and for two years after the completion of all activities required by this Agreement the following: Professional Errors and Omissions Insurance in the amount of \$1 million per occurrence and Pollution Liability Insurance in the amount of \$1 million per occurrence, covering as appropriate both general liability and professional liability arising from pollution conditions.

For the duration of this Agreement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and workmen's compensation insurance for all persons performing work on behalf of the Respondents, in furtherance of this Agreement.

If Respondents demonstrate by evidence satisfactory to

EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor Respondents need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

Prior to commencement of any work under this Agreement, and annually thereafter on the anniversary of the effective date of this Agreement, Respondents shall provide to EPA certificates of such insurance and a copy of each insurance policy.

At least 7 days prior to commencing any work under this Agreement, Respondents shall certify to EPA that the required insurance has been obtained by that contractor.

The Respondents agree to indemnify and hold the United States Government, its agencies, departments, agents, and employees harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondent(s), its employees, agents, contractors, servants, receivers, successors, or assignees in carrying out activities under this Agreement. The United States Government or any agency or authorized representative thereof shall not be held as a party to any contract entered into by Respondents in carrying out activities under this Agreement.

XXI. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Agreement will be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations unless an exemption from such requirements is specifically provided in this Agreement, or made a part of this Agreement by being incorporated herein at some later date.

XXII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

In consideration of the communications between Respondents and EPA prior to the issuance of this Agreement concerning its terms, Respondents agree that there is no need for a settlement conference prior to the effective date of this Agreement. Therefore, the effective date of this Agreement will be the date on which it is signed by EPA. This Agreement may be amended by mutual agreement of EPA and Respondents. Such amendments will be in writing and will have, as the effective date, that date on which such amendments are signed by EPA. EPA Project Coordinators do not have the authority to sign amendments to the Agreement.

Any reports, plans, specifications, schedules, and attachments required by this Agreement are, upon approval by EPA, incorporated into this Agreement. Any noncompliance with such EPA approved reports, plans, specifications, schedules, and attachments will be considered a failure to achieve the

requirements of this Agreement and will subject the Respondents to the provisions included in the "Force Majeure" and "Stipulated Penalties" sections (Sections XV and XVI) of this Agreement.

No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondents will be construed as relieving Respondents of their obligation to obtain such formal approval of EPA as may be required by this Agreement.

XXIII. NOTICE TO THE STATE

EPA has notified the State of Florida regarding the requirements of this Agreement.

Upon completion of the studies, pursuant to the requirements of Section 104(c) (2) of CERCLA, 42 U.S.C. § 9604 (c) (4), EPA will notify the State of Florida before determining the appropriate remedial action to be taken at the Site.

XXIV. TERMINATION AND SATISFACTION

This Agreement shall terminate when the Respondents demonstrate in writing and certifies to the satisfaction of EPA that all activities required under this Agreement, including any additional work, payment of past costs, response and oversight costs, and any stipulated penalties demanded by EPA, have been performed and EPA has approved the certification. This notice shall not, however, terminate Respondents' obligation to comply with Sections XII, XIII, XVII, and XVIII of this Agreement.

The certification shall be signed by a responsible official representing each Respondent. Each representative shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete." For purposes of this Agreement, a responsible official is a corporate official who is in charge of a principal business function.

IT IS SO AGREED:

Atkemix Thirty-Seven, Inc.

By: Brian A. Miller

(Please Print)

Date: 8/12/00

Its: PRESIDENT

(Title)

Aventis CropScience USA Inc.

By: Brian A Spiller
(Please Print)Date: 8/18/00Its: AGENT
(Title)

Aventis CropScience USA LP

By: Brian A Spiller
(Please Print)Date: 8/18/00Its: AGENT
(Title)

IT IS SO AGREED AND ORDERED:

United States Environmental Protection Agency, Region 4

By: Richard Green
Richard Green, Director
Waste Management DivisionDate: 8/25/00